IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1902 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAYATRIKRUPA EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

NANAVATY ADVOCATES for Petitioner

MR PR ABHICHANDANI, AGP for Respondent Nos. 1,3

MR DR DAVE FOR MR AD OZA GP for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 25/07/2002

ORAL JUDGEMENT

#. Rule. Mr.P.R.Abhichandani, learned AGP waives service of notice of rule for the respondent Nos.1 State of Gujarat and respondent No.3 - The District Education Officer and Mr.D.R.Dave, learned advocate appearing Mr.A.D. Oza, learned GP waives service of notice of rule

for the respondent No.2 - Gujarat Secondary Education Board.

#. At the joint request of learned advocates for the parties, the matter is heard and finally disposed of by this order.

#. The petitioner is a Public Charitable Trust. An advertisement dated 28th August, 2000 was issued by the respondent No.2 - Board in the local newspaper inviting proposals to start a school of Secondary Education for the term commencing from June, 2001 [Annexure-A].

#. In pursuance to the aforesaid advertisement, the petitioner submitted an application to the respondent No.2 - Board for opening a school with a proposed name of Shreyas Secondary School at village Kunwar, Tal.Sami, Dist.Patan.

#. On 11th May, 2001, the petitioner was called for hearing by the respondent No.2 - Board and after hearing his representative, the Board by its impugned order dated 11th May, 2001 decided not to grant request of the petitioner for opening the school [Annexur-B]. Against that order, an appeal was preferred before the State Government, which was also dismissed on 12th November, 2001 [Annexure-D]. Hence this petition.

#. From the impugned order at Annexure-B dated 11th May, 2001, it appears that the application of the petitioner was rejected mainly on the following grounds.

1. The area is not sufficient from where enough students are available;

2. There is a possibility of unhealthy competition; and

3. The parents may not be in a position to pay the fees;

However, from the impugned order at Annexure-D dated 12th November, 2001 passed by the Appellate Authority, it seems that the Appellate Authority has dismissed the appeal only on two grounds.

1. That rooms with enough size are not available with the school; and

2. Considering the population of the village, the appeal is required to be dismissed.

#. From the impugned order at Annexure-D, it appears that, the representative of the petitioner - Trust was present before the Appellate Authority, at the time of hearing of their appeal. On inquiry, it was found that the trust has sufficient bank balance of Rs.1,26,000-00 [Rs. One Lac Twenty Six Thousand Only]. However, according to the Appellate Authority, the population of village Kunwar was only 2492. Thus out of two grounds weighed with the Appellate Authority, it appears that the second ground regarding the population of the village was not properly considered.

#. Ms.Nanavati, learned advocate for the petitioner has submitted that the Appellate authority has considered the population of village Kunwar on the strength of 1991 sensus. In 1991, it was 2492, but in 2002, as stated on oath in this petition that the population has substantially increased to 6000. She has further submitted that the population of village Kunwar alone, would not be sole criteria because according to her submission, students from nearby villages may also get admission in the school, if the permission was granted. She has submitted that the Dy. Executive Engineer issued certificate dated 15th September, 2000 to the effect that in the radius of 10 k.m. from the village Kunwar, there is no school and all other 3 villages i.e. [1] Lolada; [2] Dudkha; and [3] Rafu and 2132 are out side radius of 10 k.m. of village Kunwar. She, therefore, has submitted that the impugned appellate order [Annexure-D] passed by the Appellate Authority is required to be set aside and the Appellate Authority be directed to reconsider the case of the petitioner. However, Mr.D.R.Dave, learned advocate for the respondent No.2 Board has submitted that, that was not only the ground on which, the appeal was dismissed. He has further submitted that the petitioner had no enough rooms and at least 400 to 500 sq.ft. were required. However, He has conceded that considering the size of the rooms, it is almost 400 sq.ft.

#. Under the circumstances, I am of the considered opinion that the impugned order dated 12th November, 2001 passed by the Appellate Authority [Annexure]D] is required to be quashed and set aside and accordingly the same is quashed and set aside. The Appellate Authority is directed to reconsider its decision in appeal after acceding an opportunity of hearing to the petitioner trust. The petitioner shall point out in appeal the present population of village Kunwar and also exact measurement of the rooms. It is hope and trust that the

Appellate Authority shall take decision afresh in light of what has been stated earlier, after extending an opportunity of hearing to the petitioner.

With these observations and directions, this petition is disposed of. Rule is made absolute to the aforesaid extent.

[B. J. SHETHNA,J.]

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